

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

RECEIVED

2005 DEC 19 P 12: 25

DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

TOMMY JORDAN,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Respondent,

Civil No. 2:05mc3273-F

RESPONSE TO ORDER ON MOTION

The United States responds as follows to the order of the Court entered December 9, 2005.

ARGUMENT

A. Because the summons at issue has been withdrawn, the petition is moot.

Pursuant to 26 U.S.C. Section 7602(a), Louie Wilson, a special agent employed by the Internal Revenue Service issued an administrative summons to petitioner Richard L. Pyper. The summons was issued to Pyper in the course of Wilson's criminal investigation of Tommy Jordan. The summons, the first page of which is attached to the Petition as Exhibit A, was dated November 14, 2005 and directed Pyper to appear before Wilson on November 24, 2005 to produce the records identified in the summons and to give testimony. The summons, however, was defective. Because Jordan was named in the summons, he was required to receive notice of the summons –

- within three days after Pyper was served with an attested copy of the summons and also;
- at least twenty-three days before the date that Pyper was required to comply with the

summons.¹ *See* 26 U.S.C. Section 7609(a)(1).

Inasmuch as the summons set a compliance date of ten days after the issue date, it did not comply with the notice requirements of Section 7609(a). Due to this defect, Wilson, on December 8, 2005, withdrew the summons. *See* attachment. The petition to quash, therefore, should now be denied as moot.²

B. Service of process is defective.

According to the certificate of service attached to the summons, the petitioner attempted to serve the Government by delivering a copy of the petition to Special Agent Wilson and by mailing a copy to “the Internal Revenue Service, 1285 Carmichael Way, Montgomery, Alabama 36106.” That does not constitute proper service on the United States. In order for service of process to be effected on the United States, Fed. R. Civ. P. 4(i) requires that service of a summons and petition be made, in the manner prescribed by that rule, on United States Attorney for the district in which the action is pending and on the Attorney General. In order to subject the United States to the jurisdiction of this Court, petitioner must comply with the requirements set forth in Rule 4(i). *See McMasters v. United States*, 260 F. 3d 814 (7th Cir. 2001); *Tuke v United States*, 76 F. 3d 155 (7th Cir. 1996). Because petitioner’s attempted method of service is improper, the Court lacks jurisdiction over this action.

¹ The notice provisions of Section 7609(a) do not apply to all internal revenue summonses issued by a criminal investigator. *See* 26 U.S.C. 7609(c)(2)(E). Because, however, the summons was issued to Pyper on account of his role as Jordan’s attorney, the notice provisions of Section 7609(a) apply to the summons at issue here. *See* 26 U.S.C. Sections 7609(c)(2)(E) and 7603(b)(2)(E).

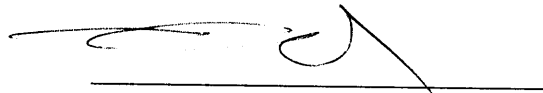
² The Internal Revenue Service intends to re-issue and re-serve the summons.

CONCLUSION

The petition should be dismissed on the grounds of mootness and insufficient service of process.

LEURA GARRETT CANARY
United States Attorney

RAND R. NEELEY
Assistant U.S. Attorney



MICHAEL N. WILCOVE
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 14198
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-6474
Telefax: (202) 514-9868
Michael.N.Wilcove@usdoj.gov

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Response to Order on Motion has been made this 16th day of December, 2005, by mailing a true and correct copy thereof via first class mail addressed to:

Richard L. Pyper, Esquire
P.O. Box 11706
Montgomery, Alabama 36111-0706

(Also by telefax (334) 288-8080)



Trial Attorney, Tax Division
U. S. Department of Justice
Post Office Box 14198
Washington, D.C. 20044